IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

MONDAY, THE 27TH NOVEMBER 2006 / 6TH AGRAHAYANA 1928

WP(C).No. 24521 of 2006(T)

PETITIONER:

DHEEMA RANI, D/O. KUTTAN,
AGED 28, EMPLOYED AS SEWING TEACHER,
VIMALAYA HREDAYA HIGH SCHOOL, VIRALY,
UCHAKADA P.O., NEYYATTINKARA.

BY ADV. SRI.R.S.KALKURA
SRI.M.S.KALESH
SRI.M.R.SARIN
SRI.HARISH GOPINATH
SRI.V.VINAY MENON

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, GENERAL EDUCATION
K. DEPARTMENT, GOVERNMENT SECRETARIAT,
TRIVANDRUM.

2. THE DISTRICT EDUCATIONAL OFFICER,
NEYYATTINKARA, TRIVANDRUM.

3. THE CORPORATE MANAGER,
VIMALAYA HREDAYA HIGH SCHOOL,
NEYYATTINKARA.

4. VALSALAKUMARI J.G., TEACHER,
VIMALA HREDAYA HIGH SCHOOL, KULATHOOR,
UCHAKADA P.O., NEYYATTINKARA.

5. SAJUMON V.J., `DHANYA',
THURUTHIVILA, THIRUPURAM P.O.,
TRIVANDRUM.

BY ADV. SRI.P.N.MOHANAN
SRI.LAL GEORGE
G.P.SRI.D.ANIL KUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 27/11/2006 ALONG WITH WPC NO. 25421 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX IN W.P.C.NO.24521 OF 2006

PETITIONER'S EXHIBITS

EXT.P1	**TRUE COPY OF THE APPOINTMENT ORDER DATED 01-11-04 ISSUED BY THE THIRD RESPONDENT.**
EXT.P2	**TRUE COPY OF THE JUDGMENT IN W.P.C.NO.23113 OF 2005.**
EXT.P3	**TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
EXT.P4	**TRUE COPY OF THE COMMUNICATION ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER.**
EXT.P5	**TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE PETITIONER.**
EXT.P6	**TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE THIRD RESPONDENT BEFORE THE 2ND RESPONDENT.**
EXT.P7	**TRUE COPY OF THE PROCEEDINGS DATED 11-08-05.**
EXT.P8	**TRUE COPY OF THE ORDER DATED 23-08-06 OF THE FIRST RESPONDENT**

RESPONDENT'S EXHIBITS

EXT.R4(A)	**TRUE COPY OF THE STAFF FIXATION ORDER 84-85.**
EXT.R4(B)	**TRUE COPY OF THE APPOINTMENT ORDER DATED 14-08-05 OF THE RESPONDENT.**
EXT.R4(C)	**TRUE COPY OF THE STAFF FIXATION ORDER.**
EXT.R4(D)	**TRUE COPY OF THE JUDGMENT IN O.P.NO.11838/96 OF THIS COURT.**
EXT.R4(E)	**TRUE COPY OF THE ORDER DATED 24-09-69 OF THE ADDL. SECRETARY TO GOVT.**
EXT.R4(F)	**TRUE COPY OF THE JUDGMENT IN O.P.15817/96 OF THIS COURT.**
EXT.R4(G)	**TRUE COPY OF THE JUDGMENT IN C.A.NO.10409/95 OF THE HONOURABLE SUPREME COURT.**

/True Copy/

PA to Judge.

K.M.JOSEPH, J.

W.P.(C).NOs.24521 & 25421 of 2006

Dated this the 27th day of November,2006.

JUDGMENT

The issue involved in these cases are connected, hence they are disposed of through this common judgment.

Petitioner in W.P.(C)No.25421/06 is a Corporate manager hereinafter referred to as Manager. Petitioner in W.P.(C)No.24521/06 is none other than the fifth respondent in the earlier writ petition. One Smt.Valsalakumari who is a party respondent in both the writ petitions came to be appointed as Craft Teacher. Her appointment was not approved. She was appointed against a retirement vacancy on 14/08/1985. Apparently her appointment was not approved on the ground that there is no vacancy as the person in whose retirement vacancy she was appointed was allowed to continue as the post was there prior to 69-70. There is no dispute that as far as the right to continuance is concerned, the matter is concluded by the decision of the Full Bench of this court reported in **Harikumar v. State of Kerala** 2003(1)KLT 797 (F.B.) against Smt.Valsalakumari It is in purported compliance of ExtP16 judgment in W.P.(C)No. 25421/06 that Ext.P17 in W.P.(C)No.25421/06, which is same as Ext.P8 in W.P.(C)No.24521/06 came to be passed by the Government. It is the said order which is

challenged in these writ petitions by the manager and by Smt.Dheema Rani. Manager also challenges Ext.P18 order which is a consequential order following Ext.P17.

2. Petitioners have raised various contentions in support of their complaint against the impugned orders. One of their complaints is that they were not heard before the impugned order is passed. A perusal of Ext.P17 would appear to bear out the complaint of the petitioners that they were not heard. Para 2 of the said order reads as follows:

> " As authorized, Additional Secretary to Government, General Education Dept. heard the petitioner along with her counsel and a representative of the District Educational Officer, Neyyattinkara."

3. I feel that having regard to the nature of the order passed, it was incumbent on the first respondent to hear all the parties. Of course it is the case of Smt.Dheema Rani that she was appointed by the manager against the vacancy which arose on 01-11-04 which is stated to be the vacancy of a Sewing Teacher. By Ext.P17 order, in fact there is a direction to convert the Sewing Teacher in the year 2004-05 into that of Craft Teacher and to approve the appointment of Smt.Valsala Kumari with effect from 01-11-04 and disburse salary accordingly. I feel that Ext.P17 cannot be sustained for the reason that petitioners were not heard before the said order was passed. Regarding the direction contained in Ext.P17 to pay salary to the fourth respondent, there is no prayer as far as the manager is concerned. But

Ext.P8 which corresponds to Ext.P17, is challenged in other writ petition in entirety by Smt.Dheema Rani.

4. Learned Government Pleader submits that this court may not accept partial challenge to Ext.P17 as the direction to pay the amount is subject to the condition that it is to be recovered from the manager of the school and if the condition is set aside, it may prejudice the Government if the entire amount is to be paid to the Teacher. I feel that Ext.P17 corresponding to Ext.P8 should be quashed, no doubt only for the reason that the petitioners in these cases were not heard before the said order was passed. Accordingly Ext.P17 in W.P.(C) No.25421/06 and Ext.P8 in W.P.(C)No.24521/06 is quashed. Ext.P18 in W.P.(C)No. 25421/06 being consequential to Ext.P17 in the said writ petition will stand quashed. First respondent is directed to consider the matter afresh. Regarding the question as to whether petitioner has to be paid salary by the Government , it is a matter which will be decided on the basis of Ext.P16 judgment in W.P.(C)No.25421/06. A decision in the matter will be taken by the first respondent in accordance with law after hearing the petitioners and the fourth respondent (Smt.Valsalakumari) within two months from the date of production of a copy of this judgment. First respondent will also hear all other affected parties before any order is passed. I make it clear that I have not expressed any view of the merits of the other

contentions raised by the parties and I leave them open. It is for them to urge all their contentions before the first respondent who will consider the same and take a decision in accordance with law.

Adv.Sri.Lal George appearing for the fifth respondent submits that the appointment of the fifth respondent has already been approved and therefore, there is no need to hear him.

These writ petitions are disposed of in the above terms.

K.M.JOSEPH.
JUDGE.

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